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Memorandum

TO: Planning Committee

DATE: April 8, 2011

FR: Executive Director

W. I.

RE: Final Committed Funds and Projects Policy

Staff seeks this Committee's review and referral of the Final Committed Funds and Projects Policy, as reflected in the attached MTC Resolution No. 4006 to the Commission for approval at its April 27, 2011 meeting.

Purpose

For Plan Bay Area, MTC staff proposes to update the Committed Funds and Projects Policy approved by the Commission for the Transportation 2035 Plan. Staff is proposing a more limited set of criteria than in past plans to determine which funds and projects are considered committed, thus "opening up" more projects and funds for discretionary action by the Commission. Staff would like to emphasize three important points: (1) all projects must have a full funding plan in order to be included in the financially constrained plan; (2) a project that is deemed "uncommitted" will need to undergo a performance assessment and will be subject to Commission approval for inclusion in the RTP; and (3) even if a project is deemed uncommitted, it does not mean that the Commission is withdrawing its support for the project.

The Committed Policy for Plan Bay Area will:

1. Determine which projects proposed for inclusion in the Plan are not subject to discretionary action by the Commission because the projects are fully funded and are too far along in the project development process to consider withdrawing support. Projects that are 100 percent funded through local funds are considered committed and not subject to a project-level performance assessment. All other projects that are not fully funded nor sufficiently advanced in the project development process will undergo a project performance assessment. The results of the performance assessment will be presented to the Commission for its review, and the Commission may consider these results, along with other policy factors, when deciding on transportation projects to be included in the financially constrained plan.
2. Determine which fund sources are not subject to discretionary action by the Commission for priority projects and programs. The determination of which fund sources are deemed "committed" affects the amount of transportation revenues that will be subject to discretionary action by the Commission.

Final Proposal

The Draft Policy was reviewed by the Bay Area Partnership, Regional Advisory Working Group, and MTC Policy Advisory Council, and MTC Planning Committee through early February 2011. Staff has revised the Policy in response to comments. There are two outstanding issues related to the threshold

criteria for determining committed projects that will need to be addressed by the Commission. Staff offers options on how to address these issues, as outlined below. The attached PowerPoint presentation provides additional information on these issues. There are no outstanding issues regarding the SB375 project exemption and the threshold criteria for committed funds. These proposed policies also are outlined below.

1. **Threshold Criteria for Determining Committed Projects:** A project is defined as “committed” based on its stage in the project development process. The issue is where to draw the line to indicate the point at which project assessment would not affect the decision to proceed with the project. Below are two options for consideration, both of which would result in significantly fewer committed projects than the approach we followed in Transportation 2035. (See **Attachment A**).
 - **Option 1 – Environmental Certification:** *Project has a certified Environmental Impact Report (EIR) or Record of Decision for Environmental Impact Statement (EIS) by May 1, 2011.* Under this option, projects would be deemed committed upon certification of the environmental document. The rationale is that by the time a project has cleared the environmental phase, the project has been fully vetted with resource agencies and the community, and project scopes are fully defined and evaluated.
 - **Option 2 – Construction:** *Project is under construction, as indicated by utility relocation, subsequent construction activities, or vehicle award by May 1, 2011.* The rationale for Option 2 is that projects in the region have often experienced significant cost increases and scope adjustments after achieving an environmental certification. Given this track record, it may be reasonable to reconsider the project based on a set of factors including project performance.

Proposition 1B Exemption: For both options, Proposition 1B Corridor Mobility Improvement Account (CMIA) and Trade Corridor Improvement Fund (TCIF) projects with full funding and approved baseline agreements as of February 2011 are proposed to be committed. Staff recommends this exception based on the fact that these projects underwent a performance assessment at the regional and state level prior to selection. Further, roughly 90% of the funding tied to these projects is committed, so little funding could be redirected to other regional priorities. Finally, state law requires these projects to be under construction by December 2012, which is prior to the expected completion date for Plan Bay Area.

Full Funding Plan Requirement: For both options, projects must have a full funding plan to be considered committed. Staff has received comments that (a) projects with certified environmental documents are assumed to have full funding plans, and (b) there should be a requirement that projects be deemed committed only if they have a full funding plan. Staff recommends that there should be a requirement for a project to have a full funding plan under either Option 1 or 2, so that the only distinction between the two options is its phase within the project development process.

2. **Exemption for Sales Tax Projects:** Under the proposed threshold criteria for determining committed projects, sales tax projects do not automatically qualify as committed projects unless they meet the criteria outlined in either Option 1 or Option 2. The Alameda County Transportation Commission has suggested that all sales tax projects be deemed committed because they are derived from voter-approved transportation sales tax expenditure plans and have full funding plans.

Staff conducted a review of sales tax expenditure plans and found that all of these plans assume the availability of varying levels of discretionary funding to deliver projects – between 20 to 80 percent. On average, regionally significant, capacity increasing sales tax projects require

discretionary funds well in excess of 50 percent. In addition, some sales tax projects have experienced significant cost increases and are likely unable to leverage enough sales tax and discretionary funding to meet the financial constraint requirements of the plan. As such, staff believes that the Commission should retain its historic discretion over how to invest discretionary funds in support of local sales tax expenditure plans. Staff recommends that only those sales tax projects that meet Option 1 or 2, above, be considered committed projects. The sales tax funds, however, would remain committed pursuant to the proposed committed fund policy described below.

3. **Projects Identified as Exempt by Senate Bill 375:** SB 375 provides that projects programmed for funding on or before December 31, 2011, are not required to be subject to the provisions required in the SCS or Alternative Planning Strategy (APS) if they are contained in the 2007 or 2009 Federal Statewide Transportation Improvement Program, funded pursuant to 2006 Proposition 1B, or were specifically listed in a ballot measure prior to December 31, 2008, approving a sales tax increase for transportation projects. MTC staff proposes that since SB 375 does not alter MTC's authority to select projects for the Plan, a project that meets these criteria may still be subject to performance assessment for inclusion in the Plan and be subject to Commission discretion based on financial constraint, policy or other considerations.
4. **Threshold Criteria for Committed Funds:** A "committed fund" is a fund source that is directed to a specific entity or purpose as mandated by statute or by the administering agency. For committed funds, MTC has no discretion on where these funds go or how they are spent. For discretionary funds, the Commission has either complete discretion on how and where funds are spent, or can amend current policies and develop conditions to guide the expenditure of funds. Like the options for "committed projects", the proposed committed funds policy is considerably less restrictive than our approach in Transportation 2035. In fact, the draft policy would roughly double the amount of funds subject to discretionary action by the Commission in adopting Plan Bay Area.

Recommendation

MTC staff recommends that this Committee approve and refer MTC Resolution No. 4006, which establishes the Committed Funds and Projects Policy for Plan Bay Area, to the Commission for approval. We will revise the language in the attached resolution to be consistent with the option on committed projects recommended by the Committee.

Steve Heminger

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